

Panaji, 15th February, 1991 (Magha 26, 1912)

SERIES II No. 46

OFFICIAL GAZETTE

GOVERNMENT OF GOA

EXTRAORDINARY

No. 3

GOVERNMENT OF GOA

Legislature Department

Notification

No. LA/A/3075/1991

The following decision dated 15th February, 1991 of the Speaker of Legislative Assembly of State of Goa given under paragraph 2(1)(a) of the Tenth Schedule of the Constitution of India is hereby notified and published.

"Petition under Article 191(2) of the Constitution of India by Dr. Kashinath Jhalmi, Member against Shri Ravi S. Naik, Member.

Order

1. Dr. Kashinath Jhalmi, MLA of Legislative Assembly, of the State of Goa has filed a petition against Shri Ravi S. Naik, MLA of Legislative Assembly of the State of Goa that Shri Ravi S. Naik, MLA should be declared as disqualified for being the Member of the Goa Legislative Assembly under Article 191(2) of the Constitution of India read with Tenth Schedule of the Constitution of India on the following ground:

(1) Shri Ravi S. Naik sworn himself as the Chief Minister of Goa by voluntarily giving up the Membership of M.G. Party, his original party and thus incurred disqualification for being the Member of the House.

2. On receipt of the petition by Dr. Kashinath Jhalmi, MLA on 25-1-1991, I had one copy of the petition forwarded to Shri Ravi S. Naik, MLA and another to Shri R. D. Khalap, Leader of M. G. Party on 29-1-1991 for their comments within 7 days from the receipt of the same vide Rule 7(3)(a) and 7(3)(b) of the Members of Goa Legislative Assembly (Disqualification on ground of Defection) Rules, 1986 hereafter called the Rules.

3. Shri R. D. Khalap has submitted his comments within the time limit i.e. on 5-2-1991. In his comments at para-9 Shri Khalap has stated as follows:

"That Shri Ravi Naik voluntarily gave up his membership of the M. G. Party as well as the M. G. P. Legislature Party and claimed to have formed a separate group alongwith one Shri Gurudas Malik and another Shri Avinash Bhonsale, Working President and Jt. Secretary of the M. G. Party with himself as the Leader".

4. Shri Ravi S. Naik, MLA did not file his comments in time, instead he made lengthy undated application which was received on 5-2-91 seeking adjournment for four weeks to file his comments as he had been admitted to Goa Medical College Hospital on account of spondylitis and that the Doctor had advised him fifteen days rest in the hospital. The enclosed medical certificate however stated that Shri Ravi

S. Naik was suffering from acute cervical spondylitis and that a period of absence from duty of 10 days with effect from 5-2-91 was considered absolutely necessary for restoration of his health. In the same application, Shri Ravi S. Naik, however, replied to the allegation in the petition stating that "in fact it is going to be the respondent's case and claim that he and several other members of the Legislative Assembly belonging to M.G. Party alongwith him constituted a group which has arisen on account of the split in the original political party". He further, stated that given the fact that the Assembly was in suspended animation the formalities under Tenth Schedule are required to be complied within due course. In the said application, therefore, it was made clear that the allegation in the petition was admitted, but, it was pleaded that there was no defection as he was protected by the provision contained in the para 3 of the Tenth Schedule.

5. Being in the hospital and as a friend I visited him in the hospital. I found that his ailment did not prevent him from meeting people and attending to his files. I therefore by my letter dated 6-2-91 addressed to Shri Ravi S. Naik informed him that as he has been attending many assignments he could give instructions to his counsel and as such I granted him extension of time to forward his comments till 11-2-1991.

Shri Ravi S. Naik however failed to forward his comments until 5.40 p.m. on 11-2-91. I took it that he did not want to send further comments. Hence a letter was sent to him informing him to appear before me for personal hearing on 13-2-91 at 4.00 p.m. in my Chamber at Secretariat, Panaji. It was made clear in that letter that he should prove his contention that there is a split in the original party and those who left the party with him are not less than 1/3 of the original party and that he could do it by filing affidavits or by producing the Members in person.

However on 11-2-1991 at 5.45 p.m. Shri Ravi S. Naik sent a letter requesting for further time for the reasons that he is still not recovered from his illness and Doctor has advised him not to look into the matter involving mental strain and stress and requested 3 weeks time to forward the comments. He further stressed that if the extension of time to forward the comments is not granted, hearing in the matter be taken up only after the Assembly session.

6. I forthwith by my reply dated 11-2-1991 addressed to Shri Ravi S. Naik informed him that the observation made by me in the letter dated the same date sent to him stands and that personal hearing will take place as scheduled. It was further stated that if he fails to attend the personal hearing on the date, time and place, I shall give my decision on the petition in his absence on the assumption that he does not wish to contest the same.

7. The petitioner, Dr. Kashinath Jhalmi was also informed that personal hearing has been fixed on 13-2-1991 at 4.00 p.m. in my Chamber and he should remain present for the hearing failing which the decision will be taken ex-parte.

8. The petitioner, Dr. Kashinath Jhalmi attended the personal hearing. Though Shri Ravi S. Naik, respondent.

had been discharged from the hospital and remained present in the Goa Legislative Assembly for Governor's Address on 13-2-1991 at 11.00 a.m. he did not appear before me at 4.00 p.m. on the same day, but an advocate represented him and pleaded his case.

9. The Advocate appearing for Shri Ravi S. Naik on 13-2-1991, submitted his reply in writing. In that reply he has again pleaded split in the M. G. Party and has claimed that 1/3 of the MLAs have made a separate group in the Assembly. In short he has taken defence under para-3 of the Tenth Schedule.

10. With his reply, he has enclosed a photostat copy of purported resolution passed by some Members of the M. G. Party at Ponda on 24-12-1990 to establish the case of split. He has enclosed another photostat copy wherein 8 persons claiming to be MLAs have signed that they constitute a group known as 'Ravi Naik's group of erstwhile M.G.P. MLAs. This has been signed at Panaji on 24-12-1990. It is addressed to no one in particular. Out of 8 names, 2 names are of MLAs who already disqualified as notified and hence are not MLAs anymore.

11. The two questions that arise for answer are (a) whether the alleged split is proved and (b) whether the group of MLAs who have dissociated from the party constitute 1/3 of MLAs of the original political party.

12. The petitioner, Dr. Kashinath Jhalmi in a very clear and studied manner argued that Shri Ravi S. Naik's defence that there was a split in the party and that a group of 1/3 party MLAs have been separated from the party, is not proved. He submitted that the two documents, are not to be believed and that they can be proved to be got up. In the first place, he says that it is not enough to show resolution to have been passed at Ponda. It was necessary to show the notices calling for that meeting and the signatures of those who attended that meeting and as to who presided at that meeting etc.

13. But the more important point he made was that if there was really a split in the party and a separate group of MLAs of old MGP was formed, it was incumbent upon the leader of that group to give the information to this effect to the Hon. Speaker as required by Rule-3 of the Rules in Form I. No such information has been furnished till today. He further stated that under Rule 4, each of the Members of the group had to give a declaration to that effect by filling Form III. This also has not been done till today. He said that in the absence of this, I could not take cognisance of the split and the group.

14. The Advocate of the respondent stressed that there has been a split in the original political party and the respondent and other constitute 1/3 of the party and claim that they came under the provisions of Para-3 of the Tenth Schedule of the Constitution.

15. When it was brought to the notice of the Advocate of the respondent that the two of the MLAs of the alleged group had already been disqualified and Shri Dharma Chodankar had intimated me on 14-1-1991 that Shri Ravi Naik and others had obtained his signature forcibly without his consent and against his will on a paper and that even on 13-2-1991 he had addressed a letter to the Speaker regarding sitting arrangements that he had no connection whatsoever with Shri Ravi S. Naik group and that he continues to be with the original political party. The Advocate referring to the disqualified two MLAs said that there was a stay by the Court. This argument cannot help the disqualified MLAs as stay from the court came after the order of disqualification was issued by me. Besides, recently the Parliament has held that the Speaker's order cannot be a subject matter of court proceedings and his decision is final

as far as Tenth Schedule of Constitution of India is concerned. With regard to third, Advocate said, he has signed on 24-12-1990 that he belong to the group. With regard to giving information to the Speaker as required by the Rules he said that the assembly was under suspension.

16. When it was brought to the notice of the Advocate of the respondent that though Goa Legislative Assembly was kept under suspended animation, the articles of the Constitution as regards the office of Speaker and Deputy Speaker were not suspended and both these offices were functioning and he could have filed the information regarding the split as required under the Rules, he had no answer. Dr. Kashinath Jhalmi also quoted the judgement of Shri Rabi Rai, Speaker, Lok Sabha announced in the Lok Sabha on 11-1-1991 under Tenth Schedule of the Constitution to show how split is to be proved.

17. Shri Ravi Naik, MLA has taken shelter under para-3 of the Tenth Schedule to protect himself from defection. His case is that there was a split in the party on 24th December 1990 at a meeting held at Ponda. A typed sheet of paper has been produced which purports to be a resolution passed on that day. On the reverse of the typed sheet there are some signatures. In the typed portions there are six names of which four are of MLAs including Shri Ravi Naik and two of disqualified MLAs. There is no name thereof of Shri Dharma Chodankar. This sheet of typed paper has been brought forward on 13-2-1991.

18. If I were shown the notice calling this meeting at Ponda showing its exact venue (typed sheet does not show) and the time (which also has not been shown in the typed sheet) and the signatures of persons who attended that meeting and minutes of that meeting, there could be some evidence to show that such meeting had been actually held. Dr. Kashinath Jhalmi is quite justified in his comment that in the absence of any such proof the holding of such meeting cannot, at all, be accepted.

19. So far as, I, as Speaker is concerned it is not only that the split is to be proved but it has to be proved by confirming to the Rules. Rule-3 of the rules has pointed out by Dr. Kashinath Jhalmi requires that such information of the new group formed, should be given to the Speaker and that should have been given in the prescribed form. But not only no prescribed form was filled but no information at all was given.

20. In the face of doubtful evidence represented by a typed sheet resolution which cannot be accepted and as no information as prescribed by the rules was given, in my judgement, the split in the party is not proved.

21. Again each of the Members of the new group if any, had to give declaration in Form-3. No one has given such information up to now.

22. On 13-2-91 I was asked by Shri Ravi Naik to arrange for him separate sitting for eight persons and one of them was Shri Dharma Chodankar. Shri Chodankar has however by his letter dated 13-2-1991 clearly stated that he was not one of the said 8 persons and that he had not left his original party. In this connection, it should be remembered that earlier in January 1991, Shri Chodankar had made a written complaint to me that his signature had been forcibly obtained on a paper.

23. In order to make matter easy for Shri Ravi Naik, I had suggested that he should produce before me affidavit or the members in person to support his case. He could have brought the six members in person before me or six affidavits of those erstwhile MGP MLAs (1/3 of 16 MGP MLAs) who had joined his group after the so called split. He did not produce a single affidavit nor the persons.

Out of the eight signatures supposed to have been taken by him at Panaji on 24-12-1990 two are the persons who were already disqualified and one of Shri Dharma Chodankar who has stated in clear terms that he does not belong to the group and he on 13-2-1991 sat in the Assembly with the Members of his original party.

24. For the above reasons, I hold that there is no group of 1/3 erstwhile MGP MLAs including Shri Ravi Naik.

25. For all the above reasons I have to answer both above questions in the negative. There is no evidence of any split in the M. G. Party and Shri Ravi Naik and those MLAs who are with him do not constitute 1/3 of the MLAs of the original M.G. Party. Shri Ravi Naik is therefore is not protected by Para-3 of the Tenth Schedule.

26. Goa's political Scenario has bestowed upon me to decide certain course of action, which with great patience and maximum perfection I am doing my bounden duty. Some times circumstances make you to perform the toughest and at the same time sorrowful act, but to preserve the democratic values, institution and the dignity of the House and above all the democracy itself one has to over come all the hurdles and without any fear or favour has to judge the things as per one's own consciousness mingled with facts and the Act.

I, therefore, make the following order:

Shri Ravi S. Naik, Member of Goa Legislative Assembly is hereby declared as disqualified from being Member of Goa Legislative Assembly under Article 191(2) of the Constitution of India on the ground of defection as set out in para 2(1)(a) of the Tenth Schedule of the Constitution of India.

He shall cease to be the Member of the Goa Legislative Assembly from today, the 15th February, 1991.

Panaji
Dated: 15-2-1991

Sd -
(Surendra V. Sirsat)
Speaker

To:

1. Shri Ravi S. Naik, MLA, Chief Minister of Goa.
2. Dr. Kashinath Jhalmi, MLA.
3. Shri R. D. Khalap, MLA.
4. Secretary, Chief Election Commission of India, New Delhi.
5. Chief Secretary, Government of Goa, Panaji-Goa.
6. Secretary to Governor, Goa."

M. M. NAIK
Secretary to the Legislative
Assembly to the State of Goa

ASSEMBLY HALL
PANAJI-GOA
15TH FEBRUARY, 1991.